

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

July 9, 2004

IN RE:

PETITION FOR ARBITRATION OF CELLCO PARTNERSHIP  
D/B/A VERIZON WIRELESS

PETITION FOR ARBITRATION OF BELL SOUTH MOBILITY  
LLC; BELL SOUTH PERSONAL COMMUNICATIONS, LLC;  
CHATTANOOGA MSA LIMITED PARTNERSHIP;  
COLLECTIVELY D/B/A CINGULAR WIRELESS

PETITION FOR ARBITRATION OF AT&T WIRELESS PCS, LLC  
D/B/A AT&T WIRELESS

PETITION FOR ARBITRATION OF T-MOBILE USA, INC.

PETITION FOR ARBITRATION OF SPRINT SPECTRUM L.P.  
D/B/A SPRINT PCS

DOCKET NO.  
03-00585

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ORDER GRANTING PERMISSION FOR INTERLOCUTORY REVIEW AND  
GRANTING REQUEST FOR STAY

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On June 28, 2004, Crockett Telephone Company, Inc., Peoples Telephone Company, and West Tennessee Telephone Company, Inc (the "TEC Companies") filed a *Request for Reconsideration of "Order Granting Motion to Compel" Issued June 17, 2004 by the Pre-Arbitration Officer* ("Request"). In the *Request*, the TEC Companies asked that the "TRA reconsider the Order issued by the Pre-Arbitration Officer."<sup>1</sup> Specifically, the TEC Companies sought reconsideration of the provision of the Pre-Arbitration Officer's *Order Granting Motion to Compel*<sup>2</sup>

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<sup>1</sup> *Request for Reconsideration of "Order Granting Motion to Compel" Issued June 17, 2004 by the Pre-Arbitration Officer*, p 6 (June 28, 2004)

<sup>2</sup> The previous Pre-Arbitration Officer assigned to this Docket issued the *Order Granting Motion to Compel*

that required the TEC Companies and other members of the Rural Coalition of Small LECs and Cooperatives ("Coalition") to provide copies of their two most recent audited financial statements.

On July 1, 2004, all of the members of the Coalition joined the TEC Companies' *Request* by filing the *Petition of Independent Rural Coalition Joining in a Request for Reconsideration Filed By the Tech Companies* ("Petition"). On the same day, the Commercial Mobile Radio Services ("CMRS Providers") filed the *CMRS Providers' Response to TEC Companies' Request for Reconsideration of Order Granting Motion to Compel*.

At a Status Conference held on July 2, 2004, the Pre-Arbitration Officer discussed with the Parties the procedural posture of the *Request*.<sup>3</sup> The Pre-Arbitration Officer noted that the *Order Granting Motion to Compel* was a decision on a preliminary motion and, pursuant to Tenn. Comp. R. & Regs. 1220-1-2-.06(6), any party who wishes to seek interlocutory review by the Authority of a Hearing Officer decision on a preliminary motion must make application by motion to the Hearing Officer. Upon oral motion of the TEC Companies and the Coalition, and after no party objected to treatment of the *Request* as an interlocutory appeal to the arbitration panel, the Pre-Arbitration Officer granted permission for interlocutory review.

In the *Petition*, the Coalition requested permission to join in and adopt the TEC Companies' *Request*. The Pre-Arbitration Officer finds that it is in the best interest of all the parties to streamline the interlocutory review process regarding the audited financial statements issue of the *Order Granting Motion to Compel*. Therefore, the Coalition, as a party aggrieved by the issuance of that Order, should be allowed to join with the TEC Companies in the *Request* and the Coalition deemed a proponent of the *Request* with the TEC Companies.

In addition, the Coalition requested in the *Petition* that enforcement of the Pre-Arbitration Officer's *Order Granting Motion to Compel* be stayed pending consideration of the *Petition* by

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<sup>3</sup> Tenn Comp R. & Regs 1220-1-1-.02 states that the procedural rules of the Authority apply to arbitrations held pursuant to 47 U S C § 252 unless otherwise specified.

the arbitration panel, arguing that failure to stay enforcement of the *Order Granting Motion to Compel* would render the *Petition* moot. At the Status Conference on July 2, 2004, the Pre-Arbitration Officer heard arguments from the parties on the merits of the request for a stay, and took the matter under advisement.

Tenn. Comp. R. & Regs. 1220-1-2-.19(3) sets forth the standard to be used by the Authority in deciding whether to issue a stay. Specifically, the Authority must consider and give appropriate weight to:

- (a) the likelihood of the success of the petitioner on appeal;
- (b) the hardship or injury which may be imposed on the petitioner if a stay is not granted;
- (c) the hardship or injury which may be imposed on others if a stay is granted; and
- (d) the public interest.

Financial statements of companies are confidential in nature, as evidenced by the restrictions placed on their access by the Protective Order issued in this Docket. Therefore, the question of access to the audited financial statements at the center of the reconsideration motion must be reviewed carefully within the guidelines provided by the Rule cited above.

The *Request* is tentatively scheduled to be argued before the arbitration panel on July 26, 2004; therefore, it is reasonable to assume that a decision on the merits of the *Request* will be issued soon. If a stay is granted but the *Request* subsequently is denied, there will be sufficient time for all necessary persons to review the audited financial statements under the procedural schedule currently in place. Therefore, there is no likelihood of significant hardship or injury to any of the parties if a stay is granted until the panel makes its determination. However, if a stay is denied but the *Request* subsequently is granted by the panel, there is substantial likelihood that the release of the confidential financial statements to the other parties pending the reconsideration will cause hardship or injury to the members of the Coalition. In addition, denial

of a stay will have the practical effect of rendering the panel's decision regarding the *Request* moot.

After due consideration of the arguments of the Parties and of all the factors listed Tenn. Comp. R. & Regs. 1220-1-2-.19(3), the Pre-Arbitration Officer finds that the potential for injury or hardship to the Coalition if a stay is not granted substantially outweighs other factors. As a result, the Pre-Arbitration Officer concludes that the request for a stay of the release of the audited financial statements pursuant to the *Order Granting Motion to Compel* should be granted.

The procedural schedule issued on April 15, 2004 and currently in effect provides a deadline of July 6, 2004 for the filing of pre-hearing motions. For good cause shown, the procedural schedule is amended to extend the date for the filing of pre-hearing motions to **July 20, 2004 at 2:00 p.m.**

**IT IS THEREFORE ORDERED THAT:**

1. Permission for the TEC Companies and the Coalition to seek interlocutory review of the Pre-Arbitration Officer's *Order Granting Motion to Compel* issued on June 17, 2004 is granted.
2. The Coalition's request for permission to join with the TEC Companies in the *Request* is granted.
3. The Coalition's request for a stay of the release of the audited financial statements pursuant to the *Order Granting Motion to Compel* is granted. The stay will remain in effect until such time as the arbitration panel renders a decision on the *Request for Reconsideration of "Order Granting Motion to Compel" Issued June 17, 2004 by the Pre-Arbitration Officer.*

4. The *Procedural Schedule* is amended as stated herein.

A handwritten signature in cursive script, reading "Jean A. Stone". The signature is written in black ink and is positioned above a horizontal line.

Jean A. Stone, Counsel  
as Pre-Arbitration Officer